

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANK FAHY,

Plaintiff,

v.

ORPHEOS TARBOX, et al.,

Defendants

No. C-09-1420 MMC

**ORDER DENYING PLAINTIFF'S MOTION
TO VACATE SETTLEMENT**

Before the Court is plaintiff Frank Fahy's ("Fahy") "Notice of Motion and Motion for Order Vacating Settlement With Defendant Alec Steiner," filed January 6, 2010, as amended January 11, 2010, by which motion Fahy seeks to set aside a settlement agreement reached at a settlement conference conducted September 18, 2009 by Magistrate Judge Maria Elena James ("Settlement Agreement"). The matter came before the Court for hearing on February 12, 2010. Fahy appeared pro se, as did defendant Alec Steiner ("Steiner"). By order filed February 18, 2010, the Court deferred ruling on the motion in light of a stay of proceedings, issued February 17, 2010, to allow Steiner to obtain counsel in connection with the motion. The stay now having been lifted, and the parties having unsuccessfully attempted to renegotiate the terms of their agreement, the Court finds its appropriate to rule on Fahy's motion.

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1 Having read and considered the papers filed by the parties in connection with the
2 motion, the arguments of the parties made at the hearing, and the recommendation of
3 Magistrate Judge James filed September 29, 2010, the Court hereby DENIES the motion.
4 In particular, an enforceable settlement exists, the terms of which were placed on the
5 record at the settlement conference conducted September 18, 2009. Those terms do not
6 include a number of obligations on Steiner's part that subsequently were demanded by
7 Fahy as a condition of dismissal. Consequently, any asserted failure by Steiner to perform
8 under the Settlement Agreement as recorded is not a cognizable basis for vacatur.

9 **IT IS SO ORDERED.**

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11 Dated: September 29, 2010


MAXINE M. CHESNEY
United States District Judge